**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 263/2001

PREM CHAND
v
MEHARAJUDEEN

Date of Judgment: September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. S.L. Songara, for the appellant.
None for the respondents.

By Court:

The defendant-appellant has challenged the order dated 18.5.99 passed by the Addl. District Judge No.7, Jaipur City, Jaipur, whereby the learned Judge has dismissed an application under Order 9 Rule 13 of C.P.C.

The brief facts of the case are that the plaintiff-respondent had filed a suit against the appellant-defendant for specific performance. It was alleged that on 11.9.87, the appellant had agreed to sell two shops for Rs. 40,000/-. An agreement to sell was entered into between the parties. By way of consideration the plaintiff paid Rs. 35,000/- to the appellant and the rest of the remaining amount was to be paid

on the date of registration of the sale-deed. Since the appellant did not execute the sale-deed in favour of the plaintiff-respondent, the plaintiff filed the said suit. The notices of the said suit were duly served on the appellant. The appellant filed his written statement and issues were framed on 16.8.89. The evidence of the plaintiff-respondent was recorded but remained incomplete as the appellant's counsel did not appear for cross-examining the plaintiff-respondent. Eventually, the date of cross-examination was fixed as 9.4.90. But, on that date the lawyers were on strike, therefore, no effective proceeding could take place. And the next date was fixed as 17.5.90. Since the appellant's counsel did not appear in the Court on that day also, the case was decided against the appellant. Despite the decision of the case, the appellant was not informed by his advocate. It was only on 22.8.98, i.e. after a lapse of eight years, that the appellant claims that he came to know about the said decision when the execution of the decree was started. He appeared in the execution proceedings on 17.1.99 and filed an application under Order 9 Rule 13 along with an application under Order 5 of the Limitation Act. However, vide order dated

18.5.99, the said application was dismissed. Hence this appeal before this court.

Despite the service being complete in the year 2002, no one has appeared on behalf of the respondents. Therefore, we are constrained to pass this order in the absence of the counsel for the respondent.

Mr. S.L. Songara, the learned counsel for the appellant, has argued that the appellant should not suffer because of the fault of the appellant's counsel. Moreover, the appellant had rushed to the Court for setting aside the ex-parte judgment and decree as soon as he came to know about the said judgment and decree. Hence, the appellant has been more than vigilant in protecting his interest.

We have heard the learned counsel and have perused the impugned order.

Admittedly, upon service of notice, the appellant had appeared before the trial court on 17.1.89 and had submitted his written statement on 27.3.89. On 16.8.89 the issues were

framed and the case was posted for the evidence of the plaintiff on 19.3.90 and 20.3.90. The plaintiff was examined on 20.3.90 and the appellant's counsel sought time for cross-examining the plaintiff. Hence, the case was posted for 9.4.90. According to the impugned order no effective proceedings occurred on 9.4.90 as the Presiding Officer was on leave. However, according to Mr. Songara, no effective proceedings took place on 9.4.90 as the lawyers were on strike. Nonetheless, the case was posted for the plaintiff's cross-examination on 17.5.90. Apparently, even on 17.5.90 neither the appellant, nor his counsel appeared before the Court. Therefore, the Court had no option but to pass an ex-parte judgment.

It is certainly the professional duty of an advocate to keep the client duly informed about the progress of the case. But, simultaneously, it is equally the duty of the client to be vigilant about the progress of his case. It is, indeed, surprising that the appellant did not care to enquire from his counsel about the progress of his case for eight long years. Since the appellant slept over his rights for the inordinate period of eights years, he cannot expect the courts to rush to his rescue. For

this inordinate period, the appellant has not shown any sufficient reason. Therefore, the learned Court was fully justified in dismissing the application under Order 9 Rule 13 C.P.C.

In the result, this appeal is meritless. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.